

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Raymond Orrand, Adminstrator,
et al., :
Plaintiffs, : Case No. 2:11-cv-0043
v. : JUDGE EDMUND A. SARGUS, JR.
Barone Horizontal Directional
Boring Company, Inc., : Magistrate Judge Kemp
Defendant. :
:

ORDER

After obtaining an entry of default, plaintiffs have moved for a default judgment for delinquent contributions, interest, and court costs in the total amount of \$672.80. The proposed order submitted with the motion refers to an affidavit from Raymond Orrand, the administrator of the plaintiff funds, but no such affidavit has been filed. Further, it states that the affidavit indicates that the defendant did not permit an audit of the books and records of the defendant; however, the amended complaint states that an audit occurred on March 7, 2011, and that the sums allegedly due were determined based on that audit.

The failure to file a timely answer to a complaint is an admission of all of the well-pleaded facts in the complaint which relate to liability, but it is not considered to be an admission of damages. *See Metropolitan Life Ins. Co. v. Claus*, 2009 WL 243013, *4 (S.D. Ohio January 29, 2009). Ordinarily, a party requesting a default judgment must submit independent evidence of its damages. That has not occurred here. Consequently, the motion for default judgment (#8) is **DENIED WITHOUT PREJUDICE** to its renewal so long as any renewed motion is accompanied by satisfactory proof of damages.

IT IS SO ORDERED.

5-4-11

DATE



EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE